

ESTTA Tracking number: **ESTTA648413**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056509
Party	Plaintiff Autodesk, Inc.
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Submission	Reply in Support of Motion
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Date	01/06/2015
Attachments	Petitioner Reply in Further Support of Its Motion to Compel Discovery.pdf(132484 bytes)

AUTODESK, INC.,
Petitioner,
v.
3D SYSTEMS, INC.,
Respondent.

Petitioner Autodesk, Inc. (“Petitioner”) submits this memorandum in further support of its December 15, 2014 motion, pursuant to TBMP § 523, to compel discovery.

Respondent 3D Systems, Inc. (“Respondent”) opposes this motion but does not deny any of the following:

- 1-

not heard back from Respondent about these depositions, Petitioner wrote a letter to Respondent on November 24, 2014, advising Respondent that continued failure to acknowledge or respond to the deposition notices would, under governing law, be deemed waiver of its objections, if any;

- Respondent ignored the deposition notices and follow-up letter, and instead prepared a Motion for Reconsideration challenging the Discovery Order. *See* Dkt. 30; and
- On December 10, 2014, four weeks after service of the deposition notices, shortly before Christmas and the Board's discovery cut-off, Respondent finally advised Petitioner that it would not be producing witnesses for deposition as noticed.

As a result, Petitioner could not meaningfully proceed with "follow-up" discovery (as contemplated by the Discovery Order) and had no choice but to seek Board intervention once again.

In light of Petitioner's first motion to compel, Respondent's pending motion for reconsideration of the resulting Discovery Order, and now this second motion to compel, Petitioner has been forced to litigate the very same discovery issues *three times*. As a result, this cancellation proceeding has been delayed repeatedly and has been pending in the pre-trial stage for over two years. The Board thus should: grant this motion; preclude Respondent from relying on withheld documents or information at trial; make an adverse inference regarding such documents and information at trial; direct Respondent to make its witnesses available promptly for pre-trial deposition; and direct the parties to proceed to trial shortly thereafter.

CONCLUSION

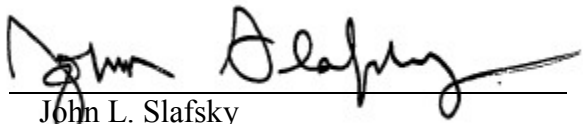
In sum, Petitioner respectfully requests that the Board grant this Motion in entirety and:

- (1) preclude Respondent from relying on such documents or information called for by the Discovery Order in connection with defense of this proceeding;
- (2) make an adverse inference regarding same;
- (3) direct Respondent to make available the three designated party witnesses (two individuals and a 30(b)(6) witnesses) for discovery deposition, on consecutive days within a

30-day time period, before trial; and (4) reschedule the parties' trial disclosures and trial testimony periods for the earliest possible dates.

Dated: January 6, 2015

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: 

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CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California, 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I caused to be personally served **PETITIONER'S REPLY IN FURTHER SUPPORT OF ITS MOTION TO COMPEL DISCOVERY** on the person(s) listed below by placing the document(s) described above in an envelope addressed as indicated below, which I sealed. I placed the envelope(s) for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Jason M. Sneed
SNEED PLLC
610 Jetton St., Suite 120-107
Davidson, North Carolina 28036

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on January 6, 2015.

